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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 647 Misc.

GAVOER MANHAT,

Petitioner,

v.

UNITED STATES OF AMERICA and
PROJECT CONSTRUCTION CORPORATION,

Respondents,

—and—

PROJECT CONSTRUCTION CORPORATION and
STUART MARINE PAINTING CORPORATION,

Impleaded Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Petitioner Seeks Only to Review Questions of Fact

The District Court in its original findings and conclusions, 113 F. Supp. 595, found the occurrence did not result from any negligence on the part of the respondents, United States of America and Project Construction Corporation. No cause was ever given for the fall of the lifeboat. Its fall was never ex-

plained. The District Court found that the only probable inference explaining its fall was that petitioner, or one of his co-workers, moved the releasing handle from the secure position to the release position.

> "These facts, coupled with failure of libelants to suggest any cause for the fall of the lifeboat, point to the possible inference that the boat fell because the releasing gear was removed by someone from the secured position in the keeper to one of complete release."

The District Court in its original findings and opinion also found that the doctrine of *res ipsa loquitur* could not be applied as the boat was not in the exclusive control of respondents at the time of the accident.

The District Court in its supplemental opinion, 121 F. Supp. 196, made the supplementary finding of fact that:

> "The lifeboat and its equipment at the time of entry by libelants were in proper order, free from defect, not shown to be lacking a toggle or keeper pin in the releasing gear and in all respects seaworthy."

The Court of Appeals, F. (2d) (not yet reported), held:

That the "conclusion" of the District Court that the "probable explanation" of the accident was that petitioner or one of his two co-workers moved the releasing handle from the secure to the release position was "amply supported by the evidence".

That the District Court "properly refused to apply the doctrine of *res ipsa loquitur*".

That the District Court did not "err" in refusing to infer from the facts of the occurrence that the releasing gear was in an unseaworthy condition.

That the evidence lends substantial support to the finding of the District Court "that the lifeboat and its equipment were in proper order, free from defect and in all respects seaworthy".

That it was "clear, beyond cavil," that petitioner and his two co-workers "were familiar with the operation of the releasing mechanism" and "were given ample warning of the danger inherent in moving the handle".

That the respondents were not under the duty to "safeguard absolutely" against the possibility that they would remove the toggle pin and move the handle from secure to release position.

That the District Court followed all the evidence respecting custom or practice to permit work in lifeboats only when they were cradled or lashed "with scrupulous care and attention" and its "conclusion that no such custom or practice existed * * * is amply supported by the evidence".

That the duty of respondents to furnish a seaworthy vessel does not "require the best possible equipment" or "impose an insurer's liability" on them.

That the evidence reasonably showed the releasing gear in this boat "furnished ample protection against the falling of a lifeboat".

That the District Court's "finding of seaworthiness seems to us to be unassailable."

That "in the light of the record" the "probative value" of the prior contracts and excerpts from Coast Guard Regulations appearing under the heading "Suggestions for Seamen", "would have been negligible".

That "it is clear the trial judge would have arrived at the same conclusion in any event."

To give consideration to any of the questions petitioner presents for review it would be necessary first for this Court to review the evidence and reverse the finding of seaworthiness or the finding of no negligence or both, or to differ with the findings below that the doctrine of *res ipsa loquitur* did not apply here, that the respondents did not have an insurer's liability or that the probative value of the prior contracts and excerpts from Coast Guard Regulations would have been negligible.

This Court will not review questions of fact and most certainly not where the findings and conclusions of the District Court are clearly and substantially supported by the evidence.

McAllister v. *United States*, 348 U. S. 19;
United States v. *Oregon State Medical Society*, 343 U. S. 326;
National Labor Relations Board v. *Pittsburgh Steamship Co.*, 340 U. S. 498;
United States v. *Yellow Cab Co.*, 338 U. S. 338.

Respectfully submitted,

JOHN L. QUINLAN,
Attorney for Respondent
Project Construction Corporation.

Dated, June 2, 1955.

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Supreme Court of the United States

OCTOBER TERM 1954—NO. 647 MISC.

GAVOER MANHAT,

Petitioner,

against

UNITED STATES OF AMERICA and PROJECT CONSTRUCTION CORPORATION,

Respondents,

and

PROJECT CONSTRUCTION CORPORATION and STUART MARINE PAINTING CORPORATION,

Impleaded-Respondents.

BRIEF OF STUART MARINE PAINTING CORPORATION, RESPONDENT-IMPLEADED, RESPONDENT TO PETITION FOR WRIT OF CERTIORARI

EDMUND F. LAMB,
Proctor for Stuart Marine Painting Corporation.

VINCENT A. CATOGGIO,
Advocate.

Dated, June 6th, 1955.

Supreme Court of the United States

OCTOBER TERM 1954—No. 647 MISC.

GAVOER MANHAT,
Petitioner,
against
UNITED STATES OF AMERICA and PROJECT CONSTRUCTION CORPORATION,
Respondents,
and
PROJECT CONSTRUCTION CORPORATION and STUART MARINE PAINTING CORPORATION,
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BRIEF OF STUART MARINE PAINTING CORPORATION, RESPONDENT-IMPLEADED, RESPONDENT TO PETITION FOR WRIT OF CERTIORARI

Statement.

Libellant petitioner never has sought and does not seek any direct relief against his employer, this respondent, Stuart Marine Painting Corporation. Such relief, in any event, is barred under the Longshoremen's & Harbor Workers' Compensation Act, 33 U. S. C. 905.

Because indemnity and judgment over against Stuart Marine Painting Corporation has been sought in pleadings by the respondents, the United States of America and Project Construction Corporation, therefore the instant respondent, Stuart Marine Painting Corporation has a direct interest in the present proceeding.

Assuming as we understand, that all respondents to the petition herein are required to file their briefs within 30 days of the filing of the petition under Rule 38, par. 3, of

this Court, we are in doubt as to whether 1, either the United States of America or Project Construction Corporation may present to this Court for determination the question concerning their claims for indemnity over against Stuart Marine Painting Corporation and 2, if they should, will Stuart Marine Painting Corporation be allowed an additional 30 days to answer such claims over as may be made.

Of course, should the petition for certiorari herein be denied, then no need will exist for considering the question of indemnity should it be presented. Since this is so, the question whether the petition herein should be denied or not directly affects the rights of the respondent-impleaded, Stuart Marine Painting Corporation.

POINT I.

The petition seeks nothing more than a trial of the facts *de novo*.

The petition, after enumerating eight alleged questions presented for review, argues principally why its proof should have been accepted.

Petitioner's argument is not that any of the gear or equipment of the ship was defective and the vessel unseaworthy. It is rather that because the ship's properly functioning and operating gear and equipment (the accident lifeboat and its Rottmer-type releasing gear) were instruments involved in injury to the petitioner, the ship was unseaworthy.

That the lifeboat and its supports and the Rottmer-type releasing gear were in proper working order, was established by a preponderance of the evidence according to the finding of the District Court and according to the opinion of the Court of Appeals. The petitioner does not and cannot conscientiously question the accuracy of these findings.

The petitioner, in the District Court and in the Court

of Appeals rested his claim in the main on an alleged custom and practice to secure *all* lifeboats with additional lashings when they are suspended over the side of a vessel. The District Court found as a fact that this was not established and the Court of Appeals affirmed this view of the evidence. Judge MEDINA said in the Court of Appeals:

> "As the apparatus was in proper working order and free from any defects by way of design or otherwise and the precipitation of the lifeboat to the pier was caused by the carelessness of one of the painters, the trial court was compelled to find as it did that the machinery was in all respects properly constructed and maintained and that nothing about the apparatus itself justified an inference of unseaworthiness; and none of the authorities cited holds anything to the contrary."
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> * * * * *
>
> "The preponderance of evidence adduced at the trial fully supports the trial court's determination that the prospect of the falling of a lifeboat under the circumstances presented here did not possess those elements of reasonable foreseeability which would impel the conclusion that reliance upon the Rottmer-type releasing gear constituted a failure to exercise that degree of care which could be expected of a reasonable man. It seems clear, beyond cavil, that the three workmen were familiar with the operation of the releasing mechanism and that they were given ample warning of the danger inherent in moving the handle. Under no theory could a standard be considered reasonable which imposed upon the shipowner a duty to safeguard absolutely against the possibility that the handle would be moved by one of these men. The fact that past experience had proved that it is virtually impossible for the hooks to open unless the lever is moved in the required arc (165° to 170°), that the mechanism had passed an inspection only two and one-half weeks earlier and had functioned perfectly for more than

twenty-four hours preceding the accident negates any inference that the respondents were derelict in not taking additional precautions against the possibility of malfunction of the apparatus.

The principal factual issue contested at the trial was whether or not there was a custom or practice to permit work in lifeboats, when in port, only while the boats were in their cradles or when protected from a possible fall by lashings, sometimes described as 'stoppers' or 'preventers,' or by 'mousing' the releasing hooks. Libellant relied on a number of witnesses who testified that lashings were always used, also upon certain excerpts from a Coast Guard publication used in the instruction of those desiring certificates as lifeboatmen or ABs, and further testimony that some of the other lifeboats on this very vessel were lashed when work was done upon them overside in port. It is claimed by appellant that certain evidence was erroneously excluded, and we shall discuss that point later.

The difficulty with appellant's position on this crucial question of fact is that respondents produced a number of experts of wide experience who testified in effect that it was true that lashings were often used, but that the practice was confined to occasions when work was being done on the falls or on the releasing machinery and that no lashings were customarily used when jobs like cleaning and painting of the lifeboats were in progress.

The trial judge followed all this evidence with scrupulous care and attention and his conclusion that no such custom or practice existed, as was contended for by appellant, was based largely on the credibility of witnesses who testified in open court, and is amply supported by the evidence. What it all boiled down to is the difference between the exercise of reasonable care, on the one hand, as contrasted with the taking of every conceivable precaution or adherence to the highest standard of care, on the other."

* * * * *

"But the so-called 'Manual' did not purport to nor did it contain authoritative requirements or regulations. Its contents were not nor were they required to be published in the Federal Register, and it seems to have been no more than a quiz book for those taking the examinations for certificates as lifeboatmen or as ABs. The excerpts which were admitted were contained in the part of the 'Manual' addressed to those desiring to take the examination for certification as lifeboatmen and the excluded excerpts in the part entitled 'Suggestions for Seamen.'

In view of the liberality which generally prevails in trials before an admiralty judge, sitting without a jury, these items of proof might well have been received, but their probative value in the light of the record as a whole would have been negligible. We cannot say that the rulings as made materially prejudiced libellant's rights or that they justify a reversal of the decree, as it is clear that the trial judge would have arrived at the same conclusion in any event."

What the petitioner in effect is therefore trying to accomplish is to obtain a retrial of the factual evidence, a trial *de novo*.

CONCLUSION.

The petition should be rejected and certiorari should be denied.

Respectfully submitted,

EDMUND F. LAMB,
Proctor for Stuart Marine Painting Corporation.

VINCENT A. CATOGGIO,
Advocate.

Dated, June 6th, 1955.